

AFRICAN HUMAN SECURITY INITIATIVE
REPORT ON THE CAPACITY BUILDING WORKSHOP ON THE CRIMINAL JUSTICE
SYSTEM IN ZAMBIA

26 AUGUST, 2010 GOLDEN BRIDGE HOTEL – LUSAKA, ZAMBIA

Report done by the African Peer Review Civil Society Secretariat in Zambia

A. Background

This report gives an overview of the Lobbying for Criminal Justice Workshop that was held on 26th August, 2010 at the Golden Bridge Hotel in Lusaka Zambia. The meeting was chaired by Ms Ifoma Mulewa from Caritas Zambia, who invited the participants to make self introductions after which she invited Ambassador Adala Ochieng to make the opening remarks.

Ambassador Adala welcomed everyone to the meeting and immediately made mention of the Tripoli declaration (adopted 2009) on the promotion of peace. He also reminded participants that 2010 was a year of peace in Africa and that the African Union (AU) member states agreed to fight for peace, promote rule of law, arms control and human rights. He then reminded the participants that the review of the Criminal Justice system in Zambia aimed to complement the African Peer Review Mechanism (APRM) by focusing on the criminal justice system. Similar reviews had been undertaken in Benin, Mali, Tanzania and Sierra Leone. After the identification of problems, gaps and how to deal with the criminal justice system AHSI hoped that the workshop would provide some insights on various lobbying aspects that organizations could engage to push for reforms in the country.

Dr. Annie Chikwanha thanked the Civil Society APRM Secretariat for partnering with AHSI in conducting the seminar and gave a brief background of the network's modalities and the work it has done criminal justice. She pointed out how the various crime categories grossly affect development and how insecurity works to the advantage of the ruling elites. The APRM process was identified as one means of addressing insecurity problems.

B. The first session was composed of presentations that discussed the two concepts- advocacy and lobbying and the AHSI partners gave their organisations' experiences in southern, east and west Africa.

Lobbying Techniques for Security Reforms: East, West and Southern African Experiences

Delivered by Ms Yvonne Chibiya (Human Rights Development Trust for Southern Africa (HURIDETSA)), Murtala Touray (West Africa Network for Peace building (WANEP)) and Ambassador Ochieng Adala (Africa Peace Forum)) respectively.

Lobbying and advocacy – Yvonne Chibiya

Ms. Chibiya begun her presentation by pointing out that there is a tendency to use the terms Advocacy and Lobbying interchangeably though they have very different meanings and involve different processes. She explained that Advocacy especially in the context of CSO's, is when they seek to affect some aspect of society and bring about positive change; whether it relates to behavior change, rules, government laws and policies.

She said, Advocacy means any activity intended to raise public consciousness among decision-makers and the general public about an issue or a disadvantaged group, with a view to bring about changes in policy and improvements in their situation.

Participants on the other hand heard that Lobbying on the other hand involves the strategies that are employed by CSO's to influence legislation and the relevant reforms. Among the forms of engagement cited were:

- Coalition building – This works well especially when the lobby is around issues of common interest. It provides a platform for collaborative approach and united voice in lobbying. Coalitions can either be formalized or operate as loose networks/partnerships but working towards a common goal. Each approach has its advantages and disadvantages and is arguable but the ultimate should be to have a common position on issues.
- Public Engagement – Stakeholder inclusion is a cardinal aspect to ensure buy-in and support for any lobby effort.
- Stakeholder dialogues – Provides an opportunity for constructive debate and dialogue on policy issues.
- Roundtables with policy makers – This provides direct access to policymakers/legislators, giving an opportunity for direct submissions to decision makers. It is however important to highlight that support and buy in at that level may pose as a challenge especially in the case where there is a poor relationship between government and civil society.

Ms. Chibiya explained that one of the starting points was to take advantage of the legislature and interface with the relevant parliamentary portfolio committees. She cited

Portfolio committees on defense/home affairs or portfolio committees on human rights as committees CSO's could periodically make submissions to on issues of concern; findings of researches carried out and presentation of monitoring/shadow reports.

The aspect of evidence based empirical research was stressed considering the fact that civil society must continuously carry out empirical research on emerging trends and ensure that they disseminate findings of the research. It was stated that it was also imperative that the findings of the studies conducted were presented to the target groups and to maintain further engagement to ensure implementation of the recommendations

Shadow reporting on states obligations was another aspect participants were advised to undertake. It was noted that most of countries, are states parties to international human rights treaties/conventions; anti-corruption instruments and they have obligations to domesticate the provisions of these instruments into their own national laws. States parties are also required to prepare reports on their performance in respect of implementing and domestication of the provisions of these treaties.

It was observed that most of the treaties make provision for the engagement of civil society and hence one role that CSO's could play was that of monitoring the compliance and producing shadow reports on performance of their respective governments in a bid to provide independent positions/views as well as highlight gaps in respect to domestication of human rights obligations.

Ms. Chibiya noted that CSO's as part of a lobby effort should also extend their efforts towards training and capacity development, especially in the area of human rights. Most of the times, failure or ineffectiveness by our governments/government institutions is due to lack of capacity (both human and technical) and CSO's can play their role to close this gap.

Some of the strategies that had been used in southern Africa included:

- Lobby for the adoption and implementation of anti-corruption initiatives;
 - roundtables with Ministries of Justice
 - Engagement with SADC Legal Sector
 - Funding and technical support
- Support to SADC through training and capacity development (SAFAC);
- Support to Inter-Ministerial Committees on State Party Reporting;
- Support to CSO's on shadow reporting;
- Submissions to the relevant treaty bodies;

Lobbying for Security Reforms in West Africa: Mr. Murtala Touray, WANEP,

Mr. Touray began his presentation by stating that Advocacy & Lobbying is a systematic and structured strategy to influence or shape the actions of decision-makers to achieve a predetermined goal. Hence each Advocacy/Lobbying technique employed is a function of the socio-political and cultural context of each circumstance. West Africa's population is approximately 315 million, but it is rapidly growing and projections suggest that the population will reach 480 million by 2030 and between 650 and 700 million by 2050 (OECD 2007 Estimates) and 15 West African states have together experienced more than 41 military coups, of which 40 were bloody; at least 82 coup plots; seven (7) civil wars and many other forms of political violence. This set the background for lobbying the Economic Community of West African States (ECOWAS). Many of the institution's protocols provide an entry point for engagement by CSOs eg :

- a. The Protocol on Non-aggression
- b. The Protocol on Mutual Assistance in Defence
- c. Article 58 Revised Treaty of 1993
- d. Declarations of ECOWAS Political Principles
- e. The Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security
- f. the Supplementary Protocol on Democracy and Good Governance
- g. ECOWAS Convention on Small Arms and Light Weapons, their Munitions and Other Related Matters

Mr. Touray explained that WANEP was the first CSO in West Africa with a regional network of national chapters with physical presence and full-time staff in 12 of the 15 member states of ECOWAS. It has a membership of 450 CSOs and CBOs across West Africa and represents its network at the level of ECOWAS, the AU through a liaison officer and it also belongs to the Peace and Security Cluster of the ECOSOCC as well as enjoying a consultative status with the UN. The WANEP-ECOWAS partnership was formalised in a MOU in 2003 for five years and has been renewed for another five years. Even though structures for lobbying exist formally, there are still some challenges :

- Low Capacity in terms of personnel and expertise
- Inadequate Financial Resources
- Political Interference
- Political Instability
- Entrenched Culture of Authoritarianism
- Opportunities:

- Political Will
- Regional Support from ECOWAS
- International Interest in Promoting Stability
- CSO Partnership
- The Importance of Coalition and Network Creation
- Cooperation vs. Antagonism
- Regional Approach
- Modest Expectation

Some of the opportunities he cited were that Governments were willing to collaborate with CSOs and networks are now taking up projects in liaison with governments.

Mr. Murtala concluded that, in doing advocacy and lobbying, coalition building is vital and that no one organization should act as get keeper. Cooperation and using the regional approach was a good thing. He stressed that advocacy and lobbying were not one off events but a continuous journey that needs to be treated as such.

Lobbying Techniques for Security Reforms - Ambassador Ocheing Adala

Ambassador Ochieng Adala shared the Africa Peace Forum (APF) lobbying experiences in East Africa. He emphasized that lobbying has a lot to do with the strategy employed by the defined group to influence common interests and he emphasized the importance of common interest in lobbying. The APF facilitated the formation of a coalition that lobbies for international standards on the transfer and import on smaller arms and weapons. This is made easier by regional instruments on smaller arms such as the Nairobi Protocol that made small non government organizations see the need to get involved. Ambassador Adala indicated that at the sub regional level, membership was vital for effective lobbying on equally clearly defined issues. The issue of strategic partners was also emphasized. CSOs engagement in shadow boxing with government was an unproductive venture hence it would be good for CSOs to take the government as strategic partners, as well as the media and other opinion shapers. He emphasized that, at end of the day, they would be talking to each other, and disagreeing in a civil manner. Again in 2006, Kenyans teamed up as CSOs and Political parties and the sooner they found common denominators the better. Some governments such as Uganda had adopted laws to promote freedom of information but had not implemented them. There is space for CSO and this was being made good use of in Kenya

He concluded by stating that where space has been created for CSOs to work with government, it was important to acknowledge that Lobbying entails give and take, it is an exchange.

The question on how to conduct roundtable discussions with regional bodies was tackled at two levels. One level was through regional workshops through e.g. the SADC secretariat which is able to approach different ministries in the regions and policy makers of those ministries. Usually, outcomes of the meetings are presented to integrated committees of ministers. The issue of mistrust between government and CSOs was perceived as a stumbling block. There was consensus that these perceptions were fueled by outsiders. CSOs are part and parcel of every community and their concerns must be taken seriously.

C. The country presentations were designed to provide information on the status of the criminal justice system in Zambia and some recommendations that could be used as starting points for rallying CSOs to mobilize to lobby and advocate for reforms

BROADENING ACCESS TO JUSTICE IN ZAMBIA-Dr Peter Loloji

Dr Peter Loloji from the University of Zambia delivered the presentation which focused on how Access to Justice in Zambia could be broadened. In his introduction, he noted that broadening access to justice demanded that the citizenry had to be well informed and aware of the existence and role of the various institutions of justice. Dr Loloji noted that these had to be created closer to the people so as to exhibit a degree of integrity and autonomy for the public to be confident and rely upon them.

The presenter further observed that the office of the Director of Public Prosecution (DPP) was a vital institution in the administration of Justice in Zambia as it has powers to institute, undertake or discontinue any criminal proceedings brought before the courts of law. He however reiterated that the DPP faced a lot of limitations and challenges in discharging its functions. The presentation also highlighted the fact that the levels of independence and security of tenure of the DPP's office played a key role in shaping citizens' perceptions. In the light of this, Dr Loloji emphasized that there was need for persons to be appointed by the Judicial Service Commission (JSC) and recommended to President for appointment and conducted in order of preferences of the various selected individuals. The presenter further observed that operations of the DPP's office should be done through a constitutional mechanism and that the lack of infrastructure and human resource were also hampering its work.

Dr Loloji observed that although personal emoluments for judges had improved, general funding to the Judiciary as a whole was still inadequate and that most of the judicial institutions were concentrated in towns with cases of corruption and frequent adjournments still posing a barrier. He also bemoaned the tendency by some Judges to pass judgments which seemed contradictory to what the Penal code provided and the slow pace at which most of the cases were disposed off at the court. He noted that this also led to very few cases being concluded as was recorded in whereby only 28,000 out of a total were handled with most of them being carried forward. The use of the English language in the courts was also seen as another challenge since some clients did not understand the language and that corruption was still perceived to be widespread. The workshop was informed that some 50% Zambians thought of the Police and some and

most Judges and Magistrates who handled cases as corrupt and that the figures were high for such key judicial institutions.

Recommendations

Following the foregoing challenges and problems which hampered access to Justice, Dr Loloji, proposed a number of solutions as a means of improving access which could also improve the livelihoods of the Zambian people. The latter was echoed on the premise that the Afro Barometer study indicated that economic conditions were low partly due to the failure by citizens to be able to assert rights, failure to access property in cases of inheritances, as well as combat poverty in the long run.

He concluded that a strong justice system can help promote economic development when people are informed and able to demand protection of their rights and increased efficiency in the Judicial system.

The presenter recommended that the current scenario would improve if;

- Professionalism was enhanced to stimulate public confidence in the system;
- Oversight mechanisms were strengthened and reinforced;
- Ensure linkages between legal awareness to broader national programmes of poverty reduction;
- Use existing and trusted networks to mobilize communities, farmers associations, and address issues of accessing Justice.
- Dimensions and institutions of justice must be made closer to the public as users and ensure that they are user friendly.

On the part of government the presenter was concerned that more as to be done through;

- Ensuring that existing institutions were grievance sensitive to accommodate the needs of marginalized groups and assure them that justice will be delivered in their favor.
- Informal dispute resolving justice systems must also be encouraged and a strategy put in place to ensure that they were socially inclusive, and was a priority on the national agenda such as by ensuring that the Legal aid board was present in most districts.
- The engagement and recognition of paralegals be regulated by criteria of guidelines to promote professionalism.
- There was need for Civil Society and the State to ensure that they improved their relations since they needed each other to provide legal aid, and promote legal awareness and educate the public on human rights.

LOBBYING FOR RESTORATIVE JUSTICE IN ZAMBIA-MR ABRAHAM MWANSA

Mr. Abraham Mwansa from the Law Association of Zambia (LAZ), led the discussion on lobbying for restorative justice in Zambia focusing on the Types of restorative processes and the problems encountered in the system.

The presenter proceeded and explained that restorative justice is a process that ensures re-fixing of a relationship, fixing the damage between the offender and victim and preventing such crimes from recurring. It puts more emphasis on the wrong done to both the community and the individual whilst recognizing that crimes were a violation of relationships between people and offences against the state on behalf of everyone.

He added that this required the victims to be given an active role in determining the mode of punishment or fines against the offenders with focus on the needs of victims and offenders, instead of the community to exact punishment. The presenter reminded the house that in criminal cases, the victims are given an active role in a dispute and offenders are encouraged to take responsibilities for their actions to repair the harm done through apologies, dialogue, returning stolen money or doing some community service on the premise that the wrong doing was against the victim or community less than the state.

Mr Mwansa explained to the house that in criminal cases, victims have an opportunity to express the full impact of the crime upon their lives, to receive answers to any questions about the incident, and to participate in holding the offender accountable for his or her actions.

This was aimed at giving the offenders an opportunity to reconcile with the victim, to the degree possible, and explain the gravity of the crime through some form of compensation actuated through court rooms, communities and other institutional levels such as prisons and non-governmental organisations involved in the work. The presenter then proceeded to consider a number of specific aspects of the justice system in Zambia including the court hierarchy which included the.

- Supreme Court
- High Court – Industrial Relations Court
- Subordinate Courts
- Small Claims Courts
- Local Courts
- Any other courts as may be establish by the Minister.

Court Room Restorative Justice and Annexed Mediation

On the role of the Courts in restorative justice, Mr Mwansa added that where such a process existed, petty or first-time offenses may be referred to restorative justice as a pre-trial diversion, with charges being dismissed once the restitution agreement is completed. He pointed out that in more serious cases, restorative justice may also be

part of a sentence that includes prison time or other punishments. Court mediation was currently prevalent in civil cases which were judge driven, legal representation was available and was manned by professional mediators.

The workshop was informed that in Criminal cases, the Plea Negotiations and Agreements Act No.2010 existed and provided for the introduction and implementation of plea negotiations and plea agreements in the criminal justice system and was applicable to the High Court and Subordinate Courts only.

In the course of the presentation, it was explained that S. 4 of the Act provided that a Public Prosecutor or an accused person may at any time before judgment enter into a plea negotiation for the purpose of reaching an agreement requiring an accused person to:

- i) make a guilty plea to an offence which is disclosed on the facts on which the charge against the accused person is based; and
- ii) fulfil the accused person's other obligations specified in the agreement.

Furthermore, by means of the Act, a Public Prosecutor under the Act may take a course of action consistent with the exercise of the powers to withdraw or discontinue the original charge against the accused person; or accept the plea of the accused person to a lesser offence whether originally included or not, than that they would have been charged with.

Participants were informed however that by Section.10, Courts were not bound by Plea Agreement except where the non-acceptance would be contrary to the interest of justice and public interest and that the court should ensure that there was no inducement offered to accused person, they understood the nature, substance and consequence of plea agreement.

Challenges and Problems of Court Room Processes and Community Restorative Justice

Mr Mwansa observed that although a lot of positives were achieved by restorative justice systems, a number of challenges existed.

He noted that the Court annexed mediation does not extend to criminal matters and under the Plea Negotiations and Agreements Act the victim is not involved; apart from the prosecutor and the accused and that the process was not driven by the adjudicator who was only involved at a later stage. Moreover, the Courts were not found in all corners of the country and Judges, and magistrates were not enough for the entire population coupled with long distances to institutions of justices, lack of infrastructure, and inadequate resources for defendants to defend themselves. The meagre resources available for the judiciary, inadequate remuneration for Magistrates, the absence of lawyers, lack of transport, and inadequate training for adjudicators and support staff were also a challenge in the process.

COMMUNITY RESTORATIVE JUSTICE OTHER INSTITUTIONS AND PROBLEMS FACED

At the level of community restorative justice, Mr Mwansa observed that this was dependant on how the community dealt with crime in general. He reiterated that concerned individuals in communities met with all the affected parties to resolve the matter and restore their relationships. This also involved some instances where the offender approached the victim's family through a family representative or a clan leader and in some cases the two families resolved the matter or before village elders; headmen/women; Council of elders at the Chief's palace or before the Chief himself/herself.

The victims of the offender were also invited to participate in the process by meeting with the elders and offender, or by appearing through a surrogate victim and during the meetings, elders discussed with the offender the nature of the offense, impact of the behaviour, and negative consequences. The victims are also given an active role in a dispute and offenders are encouraged to take responsibility for their actions either by tendering apologizes or returning the stolen money or property.

In terms of problems, the workshop was reminded that the community system lacked recognition of the customary criminal system, and there was no interaction between customary and formal criminal systems. This was compounded by the lack of uniformity of customs and practices amongst the 73 ethnic groups; lack of codification of customs and practices, lack of infrastructure, and lack of training of the adjudicators, and the absence of record keeping and precedents or uniformity in decisions.

Mr. Mwansa's presentation further considered how other institutions in the restorative system faired among them the Prisons; Legal Aid Board and Non-governmental organisations involved in the process and in relation to their enabling laws.

He explained that the **Prisons Act Amendment No 16 of 2004** of the Laws of Zambia provided under Section 114. for the Commissioner may, on such terms and conditions as the Parole Board may determine, permit a prisoner who is serving a term of imprisonment of at least two years, within six months of the date the prisoner is due to be released, to be released, to be absent from prison on parole until the expiry of the remainder of the prisoner's term of imprisonment.

Additionally, under Section 116A. (1), it was noted that the Commissioner was empowered to establish an extension services programme for purposes of providing post imprisonment programmes for discharged prisoner and prisoners who are released under compulsory after care orders. While Section 116 (2) empowers him to appoint, as extension officers, persons who are professionally qualified in social welfare for the purposes of administering the extension services programme and compulsory after care orders.

Participants were reminded that other institutions such as the Legal Aid, NGOs and Legal Resources Foundation that had lawyers could also participate in courtroom restorative justice processes to complement the work of the Prison Services. This could also be done from their offices given the limited nature of the courtroom process. Mr

Mwansa however identified the problems of limited presence in a few areas only, distance, understaffing and absence and high turnover of lawyers, and inadequate funding, and lack of transport as some of the inhibiting factors in the work of these institutions.

AREAS OF LOBBYING AND ADVOCACY AND STRATEGIES

Having considered the role of the various institutions in restorative Justice Systems in Zambia, the presenter highlighted a number of areas on which advocacy could be enhanced and focused towards improving the system. He emphasized the need for the court managed restorative criminal justice system as is the case in civil matters, to extend and promote court annexed mediation in criminal matters and the involvement of victims under the Plea Negotiations and Agreements Act in courtroom restorative justice system which must be accompanied by the amendment of the Act.

Mr Mwansa also reiterated the need to lobby and advocate for the restoration and recognition of Traditional Court System and their jurisdiction in criminal matters, increased infrastructure for enhanced access to justice for both formal and informal systems, and the codification of customary law and practices of ethnic groupings. In terms of strategies, coalition or network building by stakeholders and the engagement of traditional leaders, law makers and as well as advocating for criminal law reform, conducting of radio and television programmes on the subject; and community drama were encouraged.

COALITION BUILDING AND NETWORKING, ADVOCACY AND ISSUES AND OUTCOMES

In concluding his presentation, Mr Mwansa emphasized the importance of coalition building and networking among stakeholders and considers addressing a number of issues with possible outcomes and results. These included the need for the independence of judiciary and quasi judicial institutions, amendment of the Criminal Procedure Code and the Plea Negotiations and Agreements Act and appointment of Judicial Officers by an independent body. Others were the involvement of victims in plea negotiation agreements, awareness campaigns on formal criminal justice system and restoration of traditional courts and recognition of their criminal jurisdiction, increased infrastructure, and the relationship between victim and offender/community restored.

This would help ensure an increase in the number of citizens with access to courts and the traditional courts and formal system could be integrated and important human rights instruments ratified and domesticated to fulfil regional and international obligations. He added that traditional leaders would also be aware of the place of customary criminal justice system and its critical role in enhancing access to justice.

EMERGING ISSUES, RESPONSES AND QUESTIONS ON RESTORATIVE JUSTICE IN ZAMBIA

After the presentations by Dr Loloji and Mr Mwansa, participants were given an opportunity to ask questions and the presenters made a number of clarifications and responses.

One participant was concerned that most of the constraints faced by the office of the DPP was largely due to the fragmentation of the office while others were concerned with regards the definition of public interest in so far as it was applied in the administration of justice.

On the issue of fragmentation of the DPP's office, Mr Mwansa who delivered the presentation on restorative justice, referred participants to some of the solutions he stated above especially the need to adopt and integrate restorative justice into the formal system in view of the many gaps.

On the question of fragmentation of the office of the DPP's office, Dr Lolloji reiterated that the dispensation of justice was an expensive venture and government must ensure that the office was funded effectively. He noted that while there was an advantage in appointing officers and prosecutors from different levels, it was also helpful to employ them under one umbrella body.

Some participants wanted to find out what use government was making of the findings and recommendations of the review. Others regretted the fact that access to land was being inhibited particularly since by law, it was vested under the President. Participants were informed that citizens had the common right to challenge eviction authority by Chiefs since the law did not recognise them through bringing litigation in the Courts of law.

Dr Annie Chikwanha who was one of those involved in the research informed participants that although it was difficult to determine whether government was responding to the recommendations from the research, a number of positive steps were taken. She noted that the findings and report were shared with the office of the President, the Commissioner of Prisons, and other relevant institutions received copies of the report. Dr Chikwanha added that given the concern, it would be prudent in future to employ a mechanism of monitoring and tracking progress and how government responded to recommendations.

On the definition of public interests in the Justice System, the presenter bemoaned the fact that the concept was violated and abused by those in authority which was a challenge. On restorative justice and traditional courts, it was again noted that the traditional courts were yet to be included in the hierarchy as they did not appear anywhere and it would be important to recognize them in the process.

A CASE FOR THE ZAMBIAN PRISON SERVICE—BY COMMISSIONER RAPHAEL MUNGOLE

The presenter, former Commissioner of the Drug Enforcement Commission(DEC) Mr Raphael Musongole noted that the Prison Service was an important institution spanning from the colonial era up to Zambia's independence in 1964. He noted that the Zambia Prison Service is one of the arms of criminal justice in Zambia with the mandate of managing and controlling of prisons with inmates lodged therein and an ACT of parliament in the form of chapter 97 of the laws of Zambia sets out the main functions of the Prison Service which included the provision of custody to prisoners, correctional

services to inmate, and to manage and administer prisons generally. Mr. Mungole added that the functions of the Prison Service were enhanced by a supporting mission statement namely to

Effectively and efficiently provide and maintain humane custodial and correctional services to inmates and to increase industrial and agricultural production in order to contribute to the well being and reform of inmates and maintenance of internal security.

The presenter reiterated that a close examination of the above goal statement brings out two fundamental functions of the Prison Service including provision of custodial and correctional of inmates which was based on nine (9) core values of the service. Among them; effective and efficient contribution to the attainment of a just, peaceful and safe society, and placement and motivation of staff as essential elements for the achievement of the goal statement coupled with commitment to integrity, accountability and transparency. In the interest of public safety, it was noted that the Service endeavour's to make decisions about offenders based on informed risk assessment and risk management, commitment to protection of vulnerable prisoners, freedom of thought, conscience and religion as inherent rights of every offender.

Special Problems Affecting the Criminal Justice Administration in The Prison Service And Children In Detention

Commissioner Mungole further observed that while the constitutional functions and the core values of the Prison Service are elaborate and clear, a number of problems were specifically undermining the full attainment of justice in operationalizing the mission statement and the core values of the Prisons in Zambia. He noted that the problems ranged from overcrowding, lack of adequate food and uniforms, medical care and violations of prisoners rights and expressed concern that the operational and administrative budget has never been adequate to address the many problems facing the prison service.

The workshop was reminded that in April 2010, the Human Rights Watch, Prisons care and Rights Alliance for Southern Africa released a report which indicated that the Zambian Prison conditions were extremely rough such that some prisoners were starved, packed in cells unfit for human habitation, while others were beaten by fellow inmates and prison officers. Commissioner Mungole referred to comments of some researchers among them Kakoho Michael (2010) who in his study of the prison conditions at Mazabuka State prison found that the prison was overcrowded accommodating 250 prisoners instead of 62 in one cell, and that the judiciary and the police contributed to overcrowding in the prison through adjournment by lawyers and police failure to bring witness to court coupled with lack of enough court rooms.

The study also decried the fact that the major effects of overcrowding was prisoners contracting diseases such as T.B, Scabies, Skin rash, Bilhazia, Sneezing and HIV/AIDS, and the food supplied to the inmates was inadequate and often not fit for human consumption. It was learnt that the Mazabuka Prison conditions were generally similar to conditions found in many Zambian prisons scattered in 53 prisons establishments in Zambia and that the trend was found in studies conducted in Canada

and U.S.A which show that overcrowding in prison was a major source of administrative problems affecting the health and morale of inmates. The presenter concluded that on the prison officials could re-act to overcrowding by attempting to slow the rate of receiving new admissions.

He also observed that children in detention were by far more vulnerable than adults to the negative effects of imprisonment and for this reason, detention of children or custodian sentence for a child should be avoided wherever possible. The Commissioner added that during lawful detention, international standards should be followed to ensure that a detained child was entitled to legal representation until released from prison or detention and were separated from adults during the course of detention and were able to have contact with family members. He bemoaned the fact that the best interest requirement which was acknowledged by the UN convention and AU charters had become a flagship in children's welfare whether in or out of detention and hence the need to revisit the current trend and ensure that the state created the necessary legal and administrative infrastructure to protect children.

CONCLUDING REMARKS AND RECOMMENDATIONS

Commissioner Mungole concluded that the problems faced by the prisons were many and inherent and a degree of political will would be required to change the situation. He proposed that a number of interventions were required to improve on the delivery of justice eg:

- The need to come up with a comprehensive master plan strategy to deal with the problems in a comprehensive manner.
- Stand alone Ministry of Corrections be created to promote efficiency.
- Government be urged to set up a Prisons Ombudsman to ensure justice and promotion of human rights.
- Building of new extra prisons especially to cater for females who comprised about 16000 of the prisoners and that the Judiciary be encouraged to apply non custodial services in suitable cases.
- The president must be encouraged to use his prerogative of mercy powers to enhance parole based powers and training in human rights must be promoted.

ENHANCING ACCESS TO JUSTICE FOR JUVENILES IN ZAMBIA-DR MUSENGE

Dr Henry M Musenge led the presentation on enhancement of access to Justice for Juveniles in Zambia. He stated that the findings emerged from a study which was supported by the Embassy of Finland, United Nations International Children's Emergency Fund (UNICEF), and the Department for International Development (DFID).

Dr Musenge, noted that the findings revealed that many children were arrested for petty offenses, few children appeared with legal representation during trial, and pre-trial detentions were common and that children who came in conflict with the law were detained in prisons and not alternative safety places.

He reiterated that the supervision of probation orders was beset by practical and resource problems such as the detention of children together with adults, lack of resources at all levels as there was no budget line specifically for Juvenile Justice and that the current legislation regulating juvenile justice was outdated.

The presenter observed that the situation was hampered by the fact that untrained justice officials were also assigned to deal with children in conflict with the law coupled with high turnover of staff among police officers, prosecutors, and magistrates and the lack of information on juvenile justice.

The need for reforms in the Juvenile Justice Sector was evidenced by the zeal demonstrated by international organizations such as UNICEF who played an instrumental and stabilizing role in the juvenile justice reform process in Zambia. These organizations were contributing immensely through strategic inputs for reforms from UNICEF which included technical advice, capacity building and financial support.

PILOT PROJECTS ON JUVENILE JUSTICE SUCCESSES AND CHALLENGES

Dr Musenge disclosed that there were currently three pilot projects which included Diversion Programme, AARs, and the Child Friendly Courts aimed at promoting access to Juvenile Justice in Zambia.

He explained that the Arrest, Reception, and Referral Service (ARRS) was among other goals aimed at centralizing arrested children in police stations, in order to ensure that resources are available and concentrated at the correct point in the criminal justice process. This centralization of arrests also enabled more accurate monitoring and prevents children from being "forgotten" in an outlying police station as well as making it possible that the detention of children separately from adults where necessary.

The presenter observed that the ARRS fostered inter-sectoral cooperation and increased awareness and knowledge on juvenile justice and the support from the Police's Victim Support Unit was significant in that regard. It was however observed that the ARRS still faced substantial challenges that primarily related to case management and the development of key performance indicators, to enable monitoring and ensure that service delivery was improved.

In terms of the Child Friendly Court (CFC), Dr Musenge stated that this was first based at Chikwa Court and later moved to the Boma Court where all cases involving children were heard in one court staffed with trained officials, including social workers until it was suspended in 2004. The low number of referrals, including low organizational and skills-related outputs, were still a challenge being faced by the project, the presenter observed.

CHILD JUSTICE ENTRY POINTS, REFORMS, AND STRATEGIES

However, there are some notable achievements in enhancing juvenile justice through initiatives such as the formulation of Child Justice Forums (CJFs) and the crime prevention programme that were supported by UNICEF and the donor community through RYOCHIN.

He reiterated that the forums were regarded as a key ingredient for a transformation process of the juvenile justice system and the training rendered so far was useful and contributed to general awareness of children's rights which requires inter-sectoral co-operation, accurate monitoring and accountability.

The presenter continued and emphasized that there was need to build upon existing key strategies for improving the well-being of children in the criminal justice system with focus on the arrest and referral management, age of criminal responsibility and definition of a child, diversion and child-friendly court and the transformation and improvement of service delivery.

Benchmarks for Successful Reforms, Situation for OVCs and Strategies

Dr Musenge observed that there were currently three requirements which were useful in determining the success of the reforms. He outlined them as follows: firstly, good governance principles need to be complied with, with specific reference to management skills, ability to deliver services and quality control; and secondly, initiatives need to be in support of democracy and children's rights by ensuring access to justice with the rights of children as paramount. He added that there was also need to address crisis points as priority areas, with specific reference made to children who are deprived of their liberty.

The presenter further observed that there was need to provide adequate legal and regulatory protection for OVC by introducing comprehensive programmes to address the needs of children without parents or adult caregivers in the delivery of justice and the formulation of an action plan to promote aide consultations at all levels of government and civil society – targeted at enhancing justice for juveniles which must be monitored on a regular basis.

Government Commitment, Role of Parliament and Research

Dr Musenge emphasized that there was need for the government to welcome discussions on stable financial support for child justice reforms and this should be done by the signing and ratification of the Convention on the Rights of Children (CRC) and enhancement of general awareness on JJ and media campaigns that publicize the fate of children in the criminal justice and also profiles success stories, for example, diversion or the new child friendly court.

The presenter further reminded participants that the Parliamentary committees were also vital and formed an important component of good governance and advocating for child justice reform and was supposed to hold the executive to account to Parliament on its performance. This required the civil society to create a parliamentary information programme regarding child justice especially that the lack of research and documentation has contributed to scanty information on access to justice for juveniles in the country. He noted that it was vital to build a body of local knowledge and recorded experiences through a research and documentation programme in order to enhance the quality and speed of the transformation process by ensuring that the process is knowledge-based.

Areas of Advocacy and Recommendations

The presenter concluded by urging participants to ensure that CSOs directed their advocacy towards a number of areas such as the promotion of reforms in juvenile justice, collaboration with international organizations which were already committed to the process and the provision of strategic support, technical advice and inputs to the process. The advocacy should also demand the implementation and continuity of pilot projects aimed at improving justice for juveniles such as child friendly courts (CFCs), ARRs, centralization of arrests, trainings and capacity building, diversion programmes, and the Police Victim Support unit with specialized staff dealing with children cases.

RESEARCH AS TOOL FOR ADVOCACY-DR TONY KARBO

Dr Tony Karbo, from United Nations (UN) University for Peace in Africa, began his presentation and reiterated the need for a sustained advocacy strategy with sustained actions and resources required in order to address the issues comprehensively.

Dr Karbo observed that advocacy was a tool which required methods to engage in research, by involving individuals, or groups of people to speak or act on their own behalf in pursuit of their own needs and interests or those of others who must also have a buy in. He noted that advocacy had to be a very deliberate process targeting a specific audience, policy and issues or issue and that the challenge in data collection was to ensure that all interested parties are involved. The presenter emphasized the need to ensure that an enabling environment was created to allow for change and technical support and that data when collected must be made operational by the creation of bases for future references and knowledge based advocacy.

SUCCESSFUL POLICY ADVOCACY REFORMS

Dr Karbo observed that successful policy and reform advocacy should endeavour to link research results to existing policy domains targeted on a specific audience based on the idea of a 'valued citizen', someone who does have a problem getting heard and working with a person who is in need or discriminated against.

He explained that the advocates must also strive to gain access to decision makers and consider timing the advocacy for meaningful and tangible results and that monitoring and evaluation would be of essence.

In essence, advocacy entails giving a voice to communities, particularly those who are disempowered and vulnerable. It also meant involving local communities and local leaders as much as possible in advocacy work and rooted advocacy enables people to articulate their own needs and desires, giving them the confidence and capacities to influence decisions that affect their own future. This was by means of;

- Building Capacity, Clout and Influence
- Opening up transparency, accountability, participation, and 'seat at the table.
- Voicing, self awareness of rights and responsibilities
- Knowledge building, attitude, commitment to act, and decisions

- Voicing out, self awareness of rights and responsibilities

WORKSHOP CLOSING REMARKS AND PROGRESS STEPS

Ms Susan Mwape, Coordinator for the Civil Society APRM Secretariat made the closing remarks. She thanked participants for responding positively to the invitation and reiterated that the workshop was organized to help build capacity in CSOs in advocacy on Criminal Justice reforms and the APRM in Zambia. Ms Mwape highlighted the fact that the issues presented affected all those in attendance and that the book which was produced as a product of the research on Criminal Justice in Zambia came at the right time to help participants understand the challenges and engage actively in advocating for future legal reforms.

She invited participants to propose the way forward after their engagement in the workshop which stirred a lot of responses.

- Some participants proposed the conducting of radio programmes to give momentum to the process, while others suggested that a summary of the issues be formulated and circulated.
- There was also concern that the Civil Society must remain united and work together and engage in dialogue with policy makers and stakeholders.
- Others felt the need for monthly meetings to ensure that the message was taken to the people on the grassroots and policy makers were engaged forthrightly.
- There were also proposals that the CSO APRM Secretariat facilitate the networking of CSOs in criminal justice activities *viz-a-viz* the APRM and that a position paper could be prepared by a smaller team to highlight issues on the subjects.

Dr Annie Chikwanha, in closing also thanked all the participants and noted that the key challenge remained on how the data collected from the research was to be translated into action.